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CABINET AFFAIRS STAFFING MEMORANDUM

Date: 6/13/84 Number: 109010-A Due By: _____

Subject: Cabinet Council on Natural Resources and Environment

with the President - June 14, 1984 - 11:00 a.m. - Cabinet Room

	Action	FYI		Action	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input type="checkbox"/>	CEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEQ	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Baker	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darman (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Jenkins Chapran	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HHS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McFarlane	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Svahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Counsellor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCCT/Gunn	<input type="checkbox"/>	<input type="checkbox"/>
GSA	<input type="checkbox"/>	<input type="checkbox"/>	CCEA/Porter	<input type="checkbox"/>	<input type="checkbox"/>
EPA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CCFA/	<input type="checkbox"/>	<input type="checkbox"/>
OPM	<input type="checkbox"/>	<input type="checkbox"/>	CCHR/Simmons	<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>	CCLP/Uhlmann	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>	CCMA/Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>
			CCNRE/ Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REMARKS:

The President will chair a meeting of the Cabinet Council on Natural Resources and Environment on Thursday, June 14, 1984, at 11:00 A.M. in the Cabinet Room.

The agenda is as follows:

- Briefing on New Merger Guidelines (paper will be distributed at the meeting)
- OCS Revenue Sharing (paper attached)

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☐ Katherine Anderson
☐ Tom Gibson

Associate Director
Office of Cabinet Affairs

☒ Don Clarey
☐ Larry Herbolsheimer

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THE SECRETARY OF THE INTERIOR
WASHINGTON

June 13, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES
AND ENVIRONMENT

From: William Clark, President Pro Tempore *wfc*

Subject: Meeting With the President, Thursday,
June 14, 1984, at 11:00 a.m.

On Thursday, June 14, 1984, we will meet with the President to discuss issues affecting the offshore oil and gas leasing program. These issues were discussed at a meeting of the Cabinet Council on Tuesday, June 12.

The attached paper will serve as a basis for the discussion on Thursday.

Thank you.

Attachment

THE WHITE HOUSE

WASHINGTON

June 6, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

FROM: RANDALL E. DAVIS, EXECUTIVE SECRETARY *RD*

ISSUE: Should the Administration develop legislation which would jointly resolve the Section 8(g) litigation and Outer Continental Shelf revenue sharing issues?

INTRODUCTION:

The Federal government's ability to continue the Outer Continental Shelf oil and gas leasing program is being jeopardized by legislation involving the Coastal Zone Management Act "consistency" requirements, OCS revenue sharing, lease sale moratoria, and litigation involving escrow funds for Outer Continental Shelf Lands Act Section 8(g) lands. Some view these issues as inter-related problems that must be resolved in a comprehensive fashion in order to forge a new consensus in favor of Federal leasing activities. Others believe that each issue should be considered on its individual merit and that there is little relationship between the issues.

A decision is required on the appropriate action that should be taken by the Administration to resolve the issues of Outer Continental Shelf revenue sharing and Section 8(g) escrow fund disbursement in an effort to mitigate adverse action against the OCS leasing program. The Cabinet Council on Natural Resources and Environment considered these issues on Tuesday, June 12, 1984, but reached no resolution.

BACKGROUND:

A. OCS Revenue Sharing

The OCS revenue sharing issue has been considered by the Cabinet Council on Natural Resources and Environment on three occasions prior to this year. In the prior meetings, a consensus was reached to oppose the principle of OCS revenue sharing. However, some members of the Cabinet Council strongly held the view that legislation would inevitably pass and that the Administration would be in a better position to influence the course of events if we were to indicate the type of legislation which would be minimally acceptable. No one in the Administration, however, supports OCS revenue sharing in its present congressional form.

Legislation which would establish an OCS revenue sharing program with the states passed the House in September 1983 by a 301 to 93 vote. Similar legislation is currently pending in the Senate. In the face of possibly successful congressional action, it is important that the Cabinet Council readdress this issue to protect the Administration's interest in off-shore oil and gas leasing.

The importance of OCS leasing to the Federal government cannot be overemphasized. Each year, \$6 to \$10 billion dollars of Federal revenues are generated from bonuses and royalties from OCS oil and gas leases. All states share in these Federal revenues since they go into the general fund of the Federal Treasury and are appropriated by Congress for the benefit of all Americans. Coastal states, affected by off-shore development and related on-shore support activities, absorb most uncompensated external costs (e.g., environmental risks, social costs) associated with development while also deriving economic benefits (e.g., jobs and tax revenues) stemming from development.

One of the primary arguments made for supporting revenue sharing is that it will ease the way for additional off-shore leasing and energy production, thus benefiting all Americans. Experts project that 85% of the undiscovered oil in the United States may come from Federally-owned resources, and that two-thirds of these resources may come from the OCS. Projected oil resources for the entire OCS, 44 billion barrels, are equivalent to 20 years of imports at 1981 rates; projected OCS natural gas resources could heat 23 million homes for 50 years.

Significant state opposition to the OCS program could result in fewer and smaller bids, sale delays, or stoppages. Proponents of revenue sharing believe it will help ameliorate state opposition.

From an economic perspective, coastal states enjoy substantial benefits from OCS oil and gas leasing and development. However, proponents of OCS revenue sharing believe states are entitled to greater monetary compensation and have garnered widespread support by structuring legislation which extends revenue sharing substantially beyond states affected by OCS activities. The bill provides a bonus for coastal zone management participation and would permit states to receive substantial payments even if they opposed or impeded OCS leasing. Cost of the bill could reach \$300 million in FY 1985 and higher in the following years. The Office of Management and Budget has estimated that this legislation will add \$2.4 billion to the deficit over the next five years. Although passage of legislation may ease some state opposition, many private and environmental groups will remain opposed to leasing under any circumstances and will still retain the power to attempt to impede leasing through litigation and other means.

B. Coastal Zone Management Act Amendments

Section 307(c)(1) of the Coastal Zone Management Act of 1972 requires each Federal agency conducting or supporting activities directly affecting the coastal zone to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs. In January, 1984, the Supreme Court, by a vote of 5 to 4, issued a major decision interpreting the consistency requirements of Section 307 (c)(1). The decision eliminated the states' ability to review and challenge OCS activity under Section 307 (c)(1). This decision arguably created the possibility that the Federal government would lease in areas opposed by one or more states. Secretary Clark in a major speech shortly after the decision indicated that the Department of the Interior would work closely with the States at the pre-leasing and leasing stage under the Outer Continental Shelf Lands Act.

In response to the court opinion, two parallel actions are underway. The National Oceanic and Atmospheric Administration (NOAA) has issued an advance notice of proposed rule-making to implement the opinion and two bills, H.R.4589 and S.2324, have been introduced to reverse the decision and require consistency review and approval at the lease sale stage. This legislation would give coastal states virtual veto authority over Federal activities which may have an impact on coastal states, including off-shore leasing. The ultimate effects on the OCS leasing program may be to turn it into a program where every state affected must agree to the acreage to be offered, which would thereby substantially reduce acreage offered for leasing, Federal bonus revenues and future oil and gas production.

Several Federal agencies besides the Department of the Interior have voiced concern regarding the impact such legislation would have on their programs: the Department of Transportation is concerned about its ability to provide air or ocean navigational aids and transportation corridors (air and sea); the Navy has stated that its ability to administer fundamental activities such as naval port visits, training in operation areas, amphibious landings on Federal reserves, and weapons testing would be subject to the control of State authorities; and the Department of Agriculture objects to the Forest Service timber sales, road construction, farm plans or individual crop insurance payments coming under State CZMA review. In addition, the Department of Justice is concerned that this legislation will cause the expenditure of large amounts of time and money in litigation.

The bill's supporters have framed the issue as one of States' rights and have obtained enough congressional support to make passage conceivable. Legislation has passed the Senate Commerce Committee and the House Merchant Marine and Fisheries Subcommittee on Oceanography. Further hearings on this issue are tentatively scheduled for the House Merchant Marine and Fisheries Committee on June 26, 1984.

C. Congessionally Mandated Moratoria

Since 1981, the Department of the Interior appropriations legislation has contained language which has prohibited oil and gas leasing in various off-shore regions of the United States. These moratoria have encompassed a total of 52.2 million acres and, once adopted, tend to be continued and expanded to include additional areas. Once again, this years Department of the Interior appropriations legislation will likely contain moratoria on leasing in certain areas of the U.S., which may include up to 140 million acres. These moratoria substantially interfere with both the national goals of the OCS leasing program and with private sector exploration initiatives. It takes the industry approximately five years and a significant capital investment to plan exploration. Thus, a one year moratorium actually disrupts three to five years of investment planning and destroys needed stability in the OCS leasing program.

D. Outer Continental Shelf Lands Act Section 8(g) Litigation

Section 8(g) of the OCS Lands Act generally provides for a fair and equitable division of revenues generated by OCS oil and gas leases on tracts located within three miles of the state's submerged land boundaries and which contain oil or gas pools or fields underlying those boundaries. Under Section 8(g), the Secretary of the Interior and the Governor of the affected state must agree on what constitutes a fair and equitable division of revenues which may be generated by these lands.

With the exception of one small lease sale in Alaska, no agreement has ever been reached with respect to Section 8(g) revenues. Two states, Louisiana and Texas, have sued the Department of the Interior seeking a judicial definition of "fair and equitable." Although lower court rulings have preliminarily ruled on the scope of 8(g) in a manner partially adverse to government interests, they have not been entirely clear as to the proper resolution of this problem and may be reversed on appeal. Pending out of court settlement or final court resolution, the revenues have been placed in escrow for seven states pursuant to Section 8(g) requirements. The Texas District Court awarded approximately 30% of the escrow amount to the State of Texas. At the present time, the balance in escrow is approximately \$5 billion.

Nonsettlement of the 8(g) issue recently threatened to block a lease sale in Louisiana. The State of Louisiana, previously a strong proponent of the Administration's offshore leasing program, sued the Secretary of the Interior to block the entire sale because of non-payment of 8(g) funds. However, allegations challenging the basic concepts of area wide leasing, the receipt of fair market value, and the equitable sharing of environmental risk provided the expressed basis for the Louisiana filing. It is likely that other states will submit similar legal challenges to prevent future sales unless they receive their "fair and equitable" share 8(g) revenue. Texas is expected to attempt to block a major sale next month.

DISCUSSION:

On two of the four issues discussed above (moratoria and coastal zone management "consistency" requirements) the Administration has strongly opposed congressional action. With respect to OCS revenue sharing and the 8(g) litigation issues, however, there are differences of opinion within the Administration on the proper position to take.

All four issues can be viewed as interrelated and therefore it is necessary to have a comprehensive resolution of these issues in order to assure that we have a unified Federal policy and not undermine the viability of the OCS program.

Essentially two approaches exist for resolving these issues:

- o Commit the Administration to settling the Section 8(g) litigation through legislation which would also include some form of general OCS revenue sharing legislation different from pending proposals.

A legislative solution to these two issues could increase state support for the Federal leasing program and reduce pressure for moratoria and "consistency" legislation. To the extent that this is successful, it may increase Federal revenues. However, legislation may add substantially to the Federal deficit and may not reduce opposition or delay.

- o Maintain current 8(g) litigation and opposition to OCS revenue sharing.

Proponents of this approach maintain that support of legislation resolving the 8(g) and revenue sharing issues would be impossible to control on the Hill and, in any event, Congress is unlikely to pass revenue sharing or "consistency" legislation this year. Proponents also believe that there is little relationship between the moratoria issues and revenue sharing and that incentives from revenue sharing are unlikely to reduce opposition to leasing.

Opponents of our present position believe that if the Administration does not support some form of revenue sharing with the states, there is a substantial likelihood that CZMA "consistency" legislation, and lease sale moratoria will pass the Congress. They also believe that we run a high risk of being unable to sustain our present position on revenue sharing in the Congress, thus increasing the chances for a bad bill being presented to the President. With these "risks" and additional risks associated with the 8(g) and other litigation, there is a possibility that several billion dollars in Federal revenue could be lost each year and eventually offshore oil and gas production could be curtailed.